

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GoSMILE, INC., etc.,

Plaintiff,

-against-

09 Civ. 0840 (LAK)

JONATHAN B. LEVINE, D.D.S., et al.,

Defendants.
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ORDER

LEWIS A. KAPLAN, *District Judge*.

This matter is before the Court on defendants' motion to dismiss for lack of subject matter jurisdiction, improper venue, or failure to state a claim upon which relief may be granted. They maintain that the claims in suit are subject to a mandatory choice of forum clause that requires that this action be brought in the New York Supreme Court, New York County. In light of Section 32 of the Settlement Agreement (First Am. Cpt. Ex. 3), they are correct.

Accordingly, the motion is granted and the action is dismissed without prejudice to its reinstitution in the New York Supreme Court, New York County.
SO ORDERED.

Dated: April 8, 2009



Lewis A. Kaplan
United States District Judge